

REMARKS

In the Office Action mailed March 10, 2004, claims 1-17 are pending in the application. The Applicants respectfully request reconsideration of claims 1-17.

Claims 1-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. (US 2003/0076981) in view of Tsutsumi et al. (US 5,617,085).

The Applicants respectfully traverse the Examiner's rejections because where a rejection is applied in an application filed after November 29, 1999 under 35 U.S.C. 102(e)/103 over a reference, a showing that the invention was subject to an obligation of assignment to the same person as the reference at the time the later invention was made would preclude such a rejection. MPEP 715.01(b).

Smith qualifies as a 35 U.S.C. 103(c) reference, which includes:

(c) Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Smith qualifies as 103(c) prior art only under 35 U.S.C. 102(e), which includes:

(e) the invention was described in — (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for the purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language;

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Smith was filed on October 18, 2001 and published on April 24, 2003 whereas Applicants' Application was filed on October 25, 2002. Therefore, 35 U.S.C. 102(e)(1) applies because the Office Action is claiming that Smith describes a portion of Application 10/065,505 and Smith was published while Application 10/065,505 was pending in the Patent and Trademark Office.

The Smith reference and Application 10/065,505 were subject to assignment to a common assignee at the time of filing of Application 10/065,505. Under MPEP 715.01(b) the Smith reference is therefore disqualified as prior art.

Applicants assert that Application 10/065,505 and Smith et al. (US 2003/0076981) were, at the time the invention of Application 10/065,505 was made subject to an obligation of assignment to "Ford Global Technologies, Inc." Pursuant MPEP 715.01(b) and MPEP 706.02(1)(3), this disqualifies Smith et al. from being used as a reference under 35 U.S.C. 103 against the claims of Application 10/065,505.

According to the Office Action, as per claim 1-2, 7-9, 13, Smith teaches a crash assessment and safety device activation system. Allegedly, the system comprises: a first remote sensor 18 (fig. 1); a first visual sensor 22 (fig. 1); a safety device actuator and a controller receiving the first and visual signal and controlling the safety devices in response to the received signals (para 0022-0028). The Office Action recognizes that Smith does not teach confirming the target object based on the first object signal and the visual signal. However, the Office Action alleges that Smith teaches the capability of determining the target object using both the first remote sensor and the visual signal (para

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0022-0028). Further, according to the Office Action, Tsutsumi teaches confirming the target object using both first object signal and visual signal (col. 13, lines 40-64; col. 14, lines 3-7, lines 61-67; col. 15, lines 15-67; col. 16, lines 1-24).

As was mentioned above, the Smith reference is disqualified, and therefore only the Tsutsumi reference remains. While Tsutsumi is directed towards detecting failure of a monitoring apparatus and for monitoring the surroundings of a vehicle, Tsutsumi is not directed towards, nor does it teach, pre-crash sensing and safety device activation and lacks the claimed controller and safety device. Applicants submit that a prima facie case of obviousness has not been established. Applicants maintain that the obviousness rejection cannot be upheld in light of the complete lack of teaching in Tsutsumi that the device included therein would have application in pre-crash sensing or safety device activation. Applicants therefore believe claims 1-2, 7-9, and 13 are allowable for at least this reason.

As per claim 3-4, Smith teaches including a second remote sensor 48 or 54 (fig.2) (para 0026). However, the Smith reference is disqualified; and these claims are believed to be allowable for at least this reason.

As per claims 5-6, 10-11, 12, according to the Office Action, polling the sensor to collect data from a plurality of sensors, activating a safety device when the intensity of the crash meet the specific safety device threshold would have been well known. No combination of references teaches all elements of claims 5-6, 10-11, and 12. Rather, the Office Action relies on the knowledge generally available to one skilled on

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the art, and that the specific information necessary to support the rejection is a matter of design choice.

That is, the combination of references lacks specific information – polling multiple sensors – and relies upon “general knowledge” in the prior art that the Office Action assumes would teach the missing subject matter. However, no specific reasoning is provided to substantiate this assertion, as is required. *In re Chu*, 36 U.S.P.Q.2d 1089, 1094 (Fed. Cir. 1995) (reversing an obviousness rejection because the Patent Office provided no specific reasoning to support the assertion of design choice). Accordingly, the knowledge generally available to one of skill in the art would not suggest polling the sensor to collect data from a plurality of sensors and activating a safety device when the intensity of the crash met the specific safety device threshold. In a similar manner, if one of skill in the art was seeking to detect a vehicle, they would likely, as they have in the past, merely use one sensor, or alternately rely on the driver for verification. The polling of two sensors adds an additional verification to increase system reliability. The fact that one of skill in the art has the capabilities to arrive at the invention is not the test for whether one of skill in the art would have arrived at the invention based on the teachings of the prior art. *Ex parte Levengood*, 28 U.S.P.Q.2d 1300, 1301-02 (Bd. Pat. App. & Inter. 1993) (“That which is within the capabilities of one skilled in the art is not synonymous with obviousness”). The focus must remain on what the prior art suggested to one of skill in the art at the time the invention was made.

As per claim 14-15, refer to claims 1, 5-6, 12, and 9 above.

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As per claim 16, the Office Action recognizes that Smith, in combination with Tsutsumi, does not explicitly teach continuously detecting objects along the course of the vehicle is running. However, according to the Office Action, since the system of Smith does not stop when an object is detected, Smith in view of Tsutsumi teaches detecting the second object as claimed.

Again, the Smith reference is disqualified. However, even were it not disqualified, neither Smith nor Tsutsumi disclose or suggest the polling step of claim 16. As was mentioned, the polling of the two sensors allows for a more accurate analysis of any potential crash situation and it reduces possibility of misreads due to sensor failure. Thus, the Office Action presents a classic case of impermissible hindsight reconstruction, particularly in view of its reliance on the "general knowledge" of one skilled in the art. As stated by the Federal Circuit:

Because the [Examiner] did not explain the specific understanding or principle within the knowledge of a skilled artisan that would motivate one with no knowledge of [Applicant's] invention to make the combination, this court infers that the examiner selected these references with the assistance of hindsight. This Court forbids the use of hindsight in the selection of references that comprise the case of obviousness.

In re Rouffet, 47 U.S.P.Q.2d 1453, 1458 (Fed. Cir. 1998). Applicants believe claim 16 is allowable because claim 16 would not have been obvious to one skilled in the art at the time of the invention.

The Applicants believe the application is in condition for allowance and expedient notice thereof is earnestly solicited. If the Examiner has any further questions or comments regarding the application, please contact the undersigned directly.
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Please charge any fees required in the filing of this amendment to Deposit
Account 50-0476.

Respectfully submitted,

ARTZ & ARTZ, P.C.

By: 

Justin H. Purcell
Reg. No. 53,493
28333 Telegraph Road
Suite 250
Southfield, MI 48034
(248) 223-9500

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